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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,577	01/31/2002	Roland Green	700706.90068	9636
7590 Nicholas J. Seay Quarles & Brady LLP 1 South Pinckney Street P O Box 2113 Madison, WI 53701-2113			EXAMINER FORMAN, BETTY J	
			ART UNIT	PAPER NUMBER
			1634	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/061,577

**Applicant(s)**

GREEN ET AL.

**Examiner**

BJ Forman

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 6-9 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **FINAL ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 October 2006 has been entered.

### ***Status of the Claims***

2. This action is in response to papers filed 16 October 2006 in the previous rejections were traversed. Applicant's arguments have been thoroughly reviewed and are discussed below.

The previous rejections in the Office Action dated 18 November 2005 are maintained.

Claims 1, 6, 9 are under prosecution.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Garner (U.S. Patent No. 6,295,153, filed 4 June 1999), Baker et al (U.S. Patent

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No. 6,262,795, filed 28 August 1998) and Sweatt et al (U.S. Patent No. 5,870,176, issued 9 February 1999).

Regarding Claims 1, 6 and 9, Garner teaches a method of synthesizing an array of oligomer comprising illuminating synthesis areas using light directed to the areas by a micromirror array to photolithographic synthesis of the oligomers (Column 4, lines 36-65 and Column 5, lines 37-50). Garner further teaches illumination during a protection group deprotection whereby light directed to an area deprotects (removes) protecting groups wherein it is further taught that deprotection, a critical step in the synthesis, is dependent upon exposure time and illumination intensity (Column 7, lines 46-51 and Column 8, line 56-Column 9, line 9). This clearly suggests that correct illumination intensity is important for photosynthesis.

Garner also teaches that light is redirected or deflected by the micromirror array and their method utilizes a shutter for decreasing the amount of light striking the mirror (Column 4, lines 43-46 and 54-60). Furthermore, Sweatt et al teach a similar microarray mirror and method of photolithography wherein the micromirrors are individually controlled to redirect light from the mirror by putting a selected mirror in the "off position" thereby reducing the amount of time light is delivered to the surface (Column 3, lines 10-28).

This clearly suggests that during operation, the mirrors of the array are adjusted to alter the amount of light going to and from the micromirror and thereby adjust illumination intensity. Garner and Sweatt do not specifically teach the adjustment is based on a mathematical evaluation of illumination differences to correct non-uniformity across the area.

However, Baker et al teach that the need exists for obtaining and maintaining uniformity of illumination intensity during photolithography because non-uniformity results in non-uniform synthesis (Column 2, lines 1-34).

Baker et al teach a method of quality control for photolithography comprising measuring illumination intensity of at least two different positions in the illumination area,

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evaluating mathematically the a difference in illumination intensity and adjusting the illumination intensity of light directed to a brighter position to match that of a less bright position (Column 6, lines 11-25 and Column 7, line 35-Column 8, line 30) wherein "a variety of characteristics" are adjustable to provide the desired illumination uniformity (Column 6, lines 26-28).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the teachings of Garner, Baker and Sweatt to obtain the claimed invention. Garner teaches oligomer photosynthesis using micromirror illumination provides a low cost and efficient method of surface patterning without masks (Column 1, line 64-Column 2, line 6). Sweatt et al teach adjusting illumination by turning off (thereby reducing time) the light from micromirrors going to the surface to provide desired pattern (Column 3, lines 10-28). Baker et al teach the known problem of non-uniform illumination exists and suggests various characteristics be varied to provide uniform illumination (Column 6, lines 11-25 and Column 7, line 35-Column 8, line 30). Taken together, one of ordinary skill in the art would have been motivated to measure and adjust the illumination intensity at synthesis positions and repeatedly at each position by redirecting illumination to thereby correct non-uniform illumination based on the photolithography problems associated with non-uniform illumination taught by Baker et al and for the expected benefit of providing more accurate devices (Baker et al, Column 2, lines 1-34).

#### **Response to Arguments**

5. Applicant asserts that Sweatt et al fail to add to the teachings of Garner because Garner is directed to microarrays while Sweatt is directed to semiconductors. Applicant appears to be asserting that the art of Sweatt is non-analogous to that of Garner. The assertion is noted, however both Garner and Sweatt are directed to micromirror arrays for photopatterning on a substrate. Hence, the teaching of Sweatt is analogous to and relative to the teaching of Garner.

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Applicant further discusses each reference individually and asserts that none teach all elements of the claims. To summarize the discussion, Applicant asserts that the office has used hindsight reasoning to reject the claims.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant reiterates the previous arguments. The response to those arguments are presented below as provided in the final office action of 18 November 2005.

Applicant assert that all of the micromirrors in the array of Garner are turned on and off in unison to stop or start synthetic steps. The assertion is noted, however Applicant has not pointed to any such teaching in the Garner reference. In contrast to Applicant's asserted unison on-off control, Garner specifically teaches means for adjusting light during use, light is "redirected or deflected", a lens is used to "focus or diffuse light to illuminate the substrate", and a shutter for "decreasing" light going to the mirrors.

Applicant asserts that the combination of Garner and Baker would lead one of ordinary skill to measure intensity and then create a mask to adjust intensity variations. The argument has been considered but is not found persuasive. Baker specifically teaches that a problem exists with photolithography, that problem being non-uniform illumination (Column 2, lines 1-5). Baker further teaches the problem "arises from non-uniform or non-homogeneous characteristics of the lenses and other optical devices used in the photo lithography apparatus." (Column 2, lines 24-34). From the teaching of Baker, one of ordinary skill in the art would have been motivated to modify the photolithography method of Garner by evaluating

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illumination uniformity. And finding any non-uniform illumination, adjust the optical device as suggested by Baker (e.g. mirror array, whereby light is deflected, redirected, focused, diffused, and/or decreased to thereby correct any non-uniformity).

Applicant asserts that the references do not teach or suggest illumination for a shorter period of time for brighter illumination areas. The argument has been considered but is not found persuasive because as cited above, Garner teaches the critical aspects for high quality synthesis are UV intensity and exposure time (Column 7, lines 48-51). Therefore given Baker's suggested illumination adjustments, decreasing exposure time would have been an obvious means of decreasing illumination in the method of Garner.

This is an RCE of applicant's earlier application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



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**Conclusion**

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BJ Forman whose telephone number is (571) 272-0741. The examiner can normally be reached on 6:00 TO 3:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

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For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

  
BJ Forman, Ph.D.  
Primary Examiner  
Art Unit: 1634  
December 26, 2006